

**BUSINESS PROCESS
REVIEW OF
ENVIRONMENTAL
PERMITTING FOR
TRANSPORTATION
PROJECTS**

**Conducted for the
Transportation
Performance Audit
Board
PRELIMINARY REPORT**

**REPORT DIGEST
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STATE OF WASHINGTON

JOINT LEGISLATIVE AUDIT
AND REVIEW COMMITTEE

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Study Mandate

In January 2005, the Transportation Performance Audit Board (TPAB) requested that the Joint Legislative Audit and Review Committee (JLARC) staff review environmental permitting issues related to construction projects managed by the Washington State Department of Transportation (WSDOT). This review includes an analysis of permitting processes on complex projects to identify factors that contribute to delays and help identify priorities for streamlining efforts. It also includes a review of recent changes to the regulation of drainage ditches and stormwater runoff related to transportation projects.

Focus and Methodology for Review

JLARC contracted with an environmental services consultant to conduct this review. JLARC selected ten recent transportation projects to analyze in detail for the study. The consultant interviewed more than 60 state staff from WSDOT and the State Departments of Ecology and Fish & Wildlife, who worked on environmental documentation and permitting for the ten sample projects. The consultant also collected documentary evidence from project staff to identify the processes and timelines related to environmental tasks. Additionally, federal government staff from the U.S. Army Corps of Engineers, the National Marine Fisheries, and the U.S. Fish & Wildlife Services were interviewed by the consultant regarding their interaction with state staff for obtaining federally regulated environmental permits. Finally, the consultant conducted research and contacted staff from other state DOTs to identify recent regulatory changes for drainage ditches and stormwater runoff.

Process Review for Ten Sample Projects

For the study, JLARC selected projects that were geographically distributed across the state, and identified a mix of projects that were either completed in a timely manner or faced delays. In order to gain insight into the most complex environmental issues encountered by WSDOT, sample projects selected for the study included one or more of the following:

1. Preparation of an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA);
2. Preparation of an Environmental Assessment under NEPA; and/or
3. One or more extensive permits related to the Endangered Species Act (ESA), the Clean Water Act, the state Water Pollution Control Act, the state Hydraulic Project Approval process, or complex local government approvals.

Environmental activities for complex WSDOT construction projects include three related and overlapping elements: environmental documentation, ESA consultation, and permitting by regulatory agencies. Environmental documentation can overlap with ESA consultation, but takes much more work and time compared to permitting. Specific business processes and related activities for these elements can vary widely across different projects in terms of approach, level of detail, and science. Similarly, the processes for specific permits vary based on the site issues and conditions.

Data does not exist to uniformly quantify the exact time and costs to support detailed environmental activities. However, the consultant was able to identify timelines and assess where delays were encountered or streamlining successes were achieved from the other information obtained in this review

Assessment of Successful Project-Level Streamlining Activities

Regardless of the observed delays or successes on environmental timelines, there was evidence that WSDOT and regulatory agencies applied streamlining techniques to some extent on all ten of the sample projects. Based on analysis of the techniques that exhibited the greatest streamlining benefits for the sample projects, the consultant identified suggested priorities for process improvement efforts. This suggestion includes focusing efforts on processes that improve (in the following order):

- Communication efforts (formal partnering, presentations and site visits)
- Clear and complete applications (clear application processes and guidance, consistency across multiple agencies, pre-permitting agreements on design/mitigation, review of draft conditions when permissible)
- Timely regulatory reviews (liaison programs, MAP team, consistent staffing)
- Supporting technology (Online Joint Aquatic Resource Permit Application, GIS Workbench)

While streamlining efforts have shown successes, they have not completely matured and further efficiencies can likely be achieved.

Assessment of Root Causes of Schedule Delays

Challenges with environmental documentation and permitting processes were root causes for delays on five of the ten sample projects. On this subset of projects, however, part of the overall project delay was also a result of complications with other factors, such as planning, right-of-way acquisition, third party lawsuits, and funding interruptions. For all the sample projects, funding interruptions were the most common cause of delays.

Of the five sample projects that were delayed because of non-environmental reasons, three projects had subsequent extensions of time spent on environmental tasks. These environmental schedule extensions were not a result of failures in environmental work, but rather the need to update or revise documentation or permits as a result of changes to project approaches or conditions.

Environmental processes that were root causes for delays resulted from federal staffing issues, a lack of coordination between or within programs, and changes in environmental rules, guidance, or policy.

Several projects also had schedule extensions related to incomplete applications, state agency staffing issues, or changes in design or mitigation requirements. However, these extensions actually resulted from non-environmental complications (right-of-way, third party lawsuits, and funding delays).

Assessment of Recent Requirements for Drainage Ditches and Stormwater Management

The 9th Circuit of the Federal Court issued the *Talent* decision in 2001, which specified changes in how the Corps of Engineers should regulate irrigation ditches under the Clean Water Act. As a result of this decision, the Seattle District of the Corps of Engineers has required WSDOT to increase the level of environmental review and documentation related to drainage ditches at its construction sites. However, while WSDOT has been required to increase the activity it focuses on drainage ditches, the Corps has failed to provide formal guidance on how the *Talent* decision applies to the specifics of these types of ditches. Absent this formal guidance, the extent to which the *Talent* decision should be applied to WSDOT is debatable. WSDOT is complying with the Seattle District's requirements on a case-by-case basis. However, WSDOT has not been able to secure additional formal guidance. The additional environmental documentation needed to survey drainage ditches, if extrapolated to other WSDOT projects, may seriously reduce streamlining efforts by requiring additional permitting activities.

The Department of Ecology recently updated its general stormwater runoff requirements. In some cases, these requirements may require additional measures to reduce stormwater flow control to pre-

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development conditions (i.e., generally forested conditions in Western Washington). However, pending final negotiations with Ecology, WSDOT appears likely to receive continued exemptions to manage flow control to pre-existing site conditions in highly urbanized areas. While this may preserve WSDOT's ability to expedite permitting utilizing previous approaches, it is dependent upon how the term "highly urbanized" is applied. At this time, other Department of Ecology updates to pollutant controls in stormwater management do not appear to have substantial changes for WSDOT's environmental approach. However, future changes could result from pending Ecology studies and federal evaluations of the state's stormwater management approaches.

Conclusions and Recommendations

- Processes supporting environmental activities on complex projects can vary widely, and because of unique circumstances and site conditions they are not uniform or routine.
- Environmental permit streamlining is not fully mature, and additional efficiencies are possible.
- Staff will have the greatest impact on improving schedule timelines by focusing on processes that improve or sustain strong communication, support clear and complete applications, assist with timely regulatory reviews, and enhance technology. Practical examples of successes exist at WSDOT.
- While environmental activities can be root causes of delays, they are often accompanied by other items that impact a project's overall schedule attainment. Also, excess time spent on environmental activities is often a result of other factors (such as updating environmental documentation as a result of other changes in project design, approach, or other external delays).
- For the sample projects in this study, funding interruptions were the most common cause of schedule delays, often resulting in further updates or revisions to environmental documentation and permits.
- There is a lack of formal federal guidance on how a recent court decision will impact regulation and permitting in the long term related to drainage ditches.
- There are some recent updates to stormwater runoff management requirements, but pending the outcomes of other evaluations, these changes may have minimal impact in highly urbanized locations.

Recommendation 1 – WSDOT should annually review target project advertisement dates with resource agencies before finalizing budget requests and communicate with resource agencies on potential adjustments to dates throughout the budget process.

Recommendation 2 – The Department of Ecology should analyze the costs and benefits of obtaining Section 404 permitting authority from the U.S. Environmental Protection Agency, with the goal of assessing whether such changes would result in cost effective streamlining of permitting under the Clean Water Act within the State of Washington.

Recommendation 3 – The WSDOT Environmental Services Office should encourage project management teams to use online environmental permitting processes, such as the online Joint Aquatic Resource Permit Application (JARPA) developed by the Office of Regulatory Assistance. In addition, the One-Stop E-Permitting steering committee should discuss with DNR the benefits and practicality of integrating Forest Practices Act (FPA) permitting for transportation projects in a manner similar to the online JARPA.

Recommendation 4 – WSDOT should assess the feasibility of including cost and schedule performance on environmental documentation and permitting tasks as an ongoing project delivery performance measure.

Recommendation 5 – WSDOT should consider making a formal request of the Corps of Engineers Headquarters, alone or with others DOTs directly affected by the *Talent* decision, to establish formal guidance on the applicability of CWA Section 404 to highway drainage ditches.